IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3235 OF 2006

Mushtaq Abdul Khan Applicant
versus
The State of Maharashtra Respondent

Shri Dilip Bodake for applicant.
Shri P.A.Pol, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th September 2006

PC :

1. The applicant is the original accused no.2 in CR No.451 of 2005 registered with Satara City Police Station alleging offences punishable under section 302, 323, 504, 506 and 34 of IPC.. The applicant was arrested. After investigations were completed and a charge sheet is filed, he applied for bail which application is rejected.

2. Upon a complaint lodged by one Mahendra Jadhav with the above Police Station it is alleged that in a restaurant /hotel when the complainant was invited for dinner by his friend he was informed that there were other persons

including the deceased who were also attending the same. When the complainant reached the restaurant other persons including the deceased were already present. They were joined by the applicant. There are about seven persons sitting on a table behind them. One among them asked for a mobile charger. The said person expressed his ignorance whereupon repeated requests were made. A scuffle took place between them and it is alleged that the applicant was told not to pracipitate the matter. Later on, it is alleged that the dinner order was cancelled.

3. The allegation is that while leaving the restaurant once again an altercation took place between the applicant and the deceased. The deceased thereupon came down from first floor where the drinks were consumed and it is alleged that thereafter the applicant and another administered fist and kick blows and the other hit him with a stone. The deceased succumbed to these injuries.

4. Shri Bodake has invited my attention to Exhibit-A of this application i.e. statement of the applicant wherein at page 17, as far as role attributed to the applicant is concerned, it is

alleged that he was holding the deceased by hands and even beating him, whereas, other was having a stone in his hand with which he was hitting the deceased on his head. The third person was giving kick blows.

5. As far as injuries are concerned, the report of the local hospital is that they are on the forehead as well as on the scalp and there is a injury on the left arm.

6. The other statements including of those present at the restaurant have also been perused by me with the assistance of Shri Bodake.

7. A joint application for bail appears to have been filed and the learned Trial Judge has rejected the same on the ground that insofar as the applicant herein is concerned, there is specific evidence against him and there is a charge of murder which is alleged to have been committed with common intention. On this ground so also during identification parade the applicant having been identified, that the bail application was rejected.

8. Learned APP in all fairness does not dispute

that the role attributed to the applicant is holding the deceased by hands and giving and administering fist blows or hitting the deceased by hands. The injuries caused on the forehead and the scalp are on account of the stone which was allegedly in the hand of third person. In such circumstances and when there are no recoveries so also the role of the applicant being limited, he deserves to be enlarged on bail with stringent conditions.

9. ORDER :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.451 of 2005 registered with Satara City Police Station subject to furnishing a personal bond of Rs.10,000/- (Rs.Ten thousand only) with one or two local sureties in the like sum;

(ii) The applicant shall not enter Satara City for a period of six months except for attending the Court case;

(iii) The applicant shall furnish his address forthwith. He shall report to the nearest Police Station once in a fortnight till the trial is concluded;

(iv) The concerned Police Station where the applicant shall report, be accordingly communicated of this order;

(v) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(vi) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(viii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)